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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 963 OF 2006
WITH
CRIMINAL APPLICATION NO. 964 OF 2006
IN
CRIMINAL APPEAL NO. 922 OF 1998
ALONGWITH
CRIMINAL APPLICATION NO. 965 OF 2006
AND
CRIMINAL APPLICATION NO. 966 OF 2006
IN
CRIMINAL APPEAL NO. 127 OF 1999

Office Notes, Office Memoranda of Coram, appearances, Court's Order or Directions and Registrar's Orders	Court's or Judge's Orders

Mr. A.P. Mundargi with K.S. Patil for the applicants in Cri. Appln. Nos. 963/06, 964/06, 965/06 and 966/06.

Mr. V.B.K. Deshmukh, A.P.P. for the respondent State in all applications.

CORAM: **V.G. PALSHIKAR &**
SMT. NISHITA MHATRE, JJ.

DATED: **14TH NOVEMBER, 2006**

P.C.:

1. By these applications the accused appellants are seeking leading of additional evidence in the peculiar circumstances narrated in the applications.

2. Initially, 8 persons were charged with murder of an individual. During investigation, 6 persons were arrested and 2 persons were absconding. The trial of those 2 was separated and the trial of the present appellants continued. It resulted in conviction of the accused persons which is impugned in these appeals. During the trial, efforts were made by the defence to get on record certain documents and conduct the evidence. But it was stated that such documents do not exist or are not available, hence the trial proceeded and as aforesaid, resulted in conviction.

3. Later on 2 accused persons were arrested by the police and they were tried. They were tried by the same learned Judge who earlier tried and convicted the present accused appellants. During the course of the subsequent trial, the documents and the persons necessary to prove them were traced and later on brought on record. Appreciating

the evidence on record, the learned trial Judge came to the conclusion that the prosecution has failed to prove the guilt of those persons and acquitted the accused persons.

4. The present applications are, therefore, filed seeking leading of additional evidence on the ground that it is essential to lead the truth regarding the prosecution of all the accused persons in the murder trial. Examination of these witnesses is necessary. It is necessary that the defence is given the opportunity to prove certain facts or documents, existence of which was denied at the time when they faced the trial and the existence of which is now proved during the trial of the remaining accused persons. In such circumstances, in our opinion, powers under Section 391 are required to be exercised permitting leading of additional evidence in this regard. Hence the following order :-

O R D E R

. The learned trial Judge to record the additional evidence of 4 witnesses mentioned in Exh.A of Criminal Application No. 966 of 2006 for proving the documents mentioned in that exhibit itself. It need not be mentioned that adequate opportunity be also given to the prosecution to cross-examine these witnesses as required by law. Since the appeals are pending since 1999, we desire that the recording of additional evidence be completed by 7th of January, 2007. Let the matter be listed for orders regarding hearing on 9th January, 2007.

2. Criminal applications are accordingly disposed of.

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